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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 785

MAURICE LEVY, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the United States Board of Tax Appeals (R. 12–17) are reported in 46 B. T. A. 423. The opinion of the Circuit Court of Appeals (R. 27–30) is reported in 131 F. 2d 544.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 16, 1942 (R. 31). The

petition for a writ of certiorari was filed March 4, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

On June 19, 1937, the taxpayer sold an account receivable for $13,283.84 less than its face value, and on December 31, 1937, charged off the account as a bad debt. The question is whether the $13,283.84 is deductible in full as a partial bad debt under Section 23 (k) of the Revenue Act of 1936, or represents a capital loss which may be deducted only to the extent of $2,000 under Section 117.

STATUTE AND REGULATIONS INVOLVED

The statute and regulations are set forth in the Appendix, *infra,* pp. 7–8.

STATEMENT

The facts as found by the Board of Tax Appeals (R. 12–15) may be stated as follows:

The taxpayer is an individual engaged in the importing and manufacturing of perfumery and toilet articles in New York City. In 1926 he organized Maurice Levy Company, Ltd., a Canadian corporation, to conduct a similar business in Montreal, Canada. From time to time the taxpayer advanced cash to the corporation and sold it merchandise on credit, the amounts repre-

senting the advances and sales being carried on the taxpayer's books as an account receivable. From 1926 to 1937 payments were made by the corporation on the account and during that period the corporation paid off all its creditors except the taxpayer. As of April 22, 1937, the corporation owed the taxpayer $27,837.84. (R. 12–13.)

Prior to September 1936, the corporation had manufactured for another concern, known as Charles of the Ritz of Canada, and this source of income was the corporation's only profitable one. In September 1936, this arrangement was changed so that Charles did its own manufacturing and the corporation took half of the net profits of Charles. In March 1937, the taxpayer found that the new arrangement was unprofitable. (R. 13.)

On April 27, 1937, W. N. Beauchamp, the manager of the corporation, offered to purchase the taxpayer's stock in the corporation for $2,200, and this offer was thereupon accepted. At the same time the taxpayer offered to sell Beauchamp the debt owed the taxpayer by the corporation for $14,554. The offer was accepted by Beauchamp on June 19, 1937. The transaction was closed on that basis and the taxpayer deposited cash received to his account and credited the same to his personal account on his books. (R. 13–14.)

On December 31, 1937, the taxpayer charged

off the corporation's account and his investment in the stock by the following entry (R. 14):

Profit and loss	$14,583.84	
Maurice Levy personal	16,754.00	
Maurice Levy, Ltd.		$27,837.84
Investment		3,500.00

To write off uncollectible investment and receivables.

On his income tax return for the year 1937, the taxpayer claimed a capital loss of $1,300 on the sale of the corporation's stock, and claimed a deduction as a bad debt in the amount of $13,283.84. The latter is the difference between $27,837.84, the face amount of the amount of the account receivable, and $14,554, the sum actually received for it. The Commissioner of Internal Revenue disallowed the deduction of $13,283.84 as a bad debt, holding that the transaction constituted the sale of a capital asset within the meaning of Section 117 of the Revenue Act of 1936, and the loss was limited to $2,000. (R. 14–15.)

The Board of Tax Appeals sustained the action of the Commissioner (R. 17) and on appeal the Circuit Court of Appeals affirmed (R. 30).

ARGUMENT

There is no conflict and the decision below is correct. The precise question is whether a debt may be charged off for the purpose of a deduction under Section 23 (k) of the Revenue Act of 1936 (Appendix, *infra,* p. 7), after the obligation has been sold. The Board of Tax Appeals and the Circuit Court of Appeals correctly held that Section 23 (k) is inapplicable and that the transac-

tion resulted in a loss from the sale of a capital asset which is deductible only to the extent permitted by Section 117 (d), *infra.*

1. The Circuit Court of Appeals dealt with the case on the theory that the debt was "admittedly" a capital asset (R. 27). This conclusion followed from the petitioner's concession in the Board of Tax Appeals (R. 16) and his failure to contend otherwise in the court below. In any event, no conflict is predicated upon the point and petitioner presents no authority whatever in support of the contention now made that an account receivable is not a capital asset. Nor is there any conflict, as alleged (Pet. 6), with the cases holding that the loss and bad debt provisions are mutually exclusive, for, as recognized by the court below (R. 29–30), they have no application where there is a closed transaction such as the sale herein which brings the loss provisions into play.

2. Since Section 23 (k) allows a deduction for debts "charged off", it is implicit that the statute is concerned with assets which still appear on the books. This construction was adopted in *Reed* v. *Commissioner,* 129 F. 2d 908, 912 (C. C. A. 4th), and petitioner presents no authority to the contrary. Here the property had been sold and there remained no debt which could thereafter affect petitioner's tax liability.

3. The court below did not place its decision upon the ground that the charge-off of a partial bad debt must be made simultaneously with the

ascertainment of partial worthlessness. Accordingly, petitioner's authorities to the contrary are inapplicable.

CONCLUSION

There is no conflict of decisions and no reason requiring a review by this Court. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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